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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,787	10/11/2001	Martin Kleban	Mo-6451/LcA 34,705	9589
34947	7590	11/25/2003	EXAMINER	
BAYER CHEMICALS CORPORATION			HESS, BRUCE H	
PATENT DEPARTMENT			ART UNIT	PAPER NUMBER
100 BAYER ROAD			1774	
PITTSBURGH, PA 15205-9741			DATE MAILED: 11/25/2003	

X

Please find below and/or attached an Office communication concerning this application or proceeding.

CLO 7

## Office Action Summary

Application No. <b>09/975,787</b>	Applicant(s) <b>Kleban et al.</b>
Examiner <b>Bruce Hess</b>	Group Art Unit <b>1774</b>

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

Responsive to communication(s) filed on

9-15-03 (Response)

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

1-14

Claim(s) \_\_\_\_\_ is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

### Application Papers

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

## Office Action Summary

1. Claims 1-14 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Nehen et al. for the reasons of record

Claims 1-14 are again rejected under the judicially created doctrine of obviousness – type-doubling patenting as being unpatentable over claims 1-9 of U.S.P. 5,635,211 for the reasons of record.

The In re Antonie result-effective variable concept is an exception to the rule established in In re Aller, not a prerequisite to its application. When applicant establishes that a parameter is result-effective, the prima facie care of obviousness established under In re Aller is rebutted. In the present case, there have been no showings by applicants that the isocyanurate content and the weight % of the walls based on the total weight of the microcapsules are result-effective.

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Art Unit: 1774

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Any inquiry concerning this communication should be directed to Bruce Hess at telephone number (703) 308-2402.

B. Hess/lap

November 4, 2003

*Bruce Hess*

BRUCE H. HESS  
PRIMARY EXAMINER